

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KONAMI GAMING, INC.,

Plaintiff,

vs.

HIGH 5 GAMES, LLC,

Defendant.

Case No. 2:14-cv-01483-RFB-NJK

ORDER

(Docket No. 103)

Pending before the Court is a motion to stay discovery pending resolution of Defendant's motion for summary judgment. *See* Docket No. 103; *see also* Docket No. 92 (motion for summary judgment). Plaintiff filed a response in opposition, and Defendant filed a reply. Docket Nos. 105, 109. The Court finds the motions properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the Court **DENIES** Defendant's motion to stay discovery. Docket No. 103.

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay carries the heavy burden of making a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional

1 discovery; and (3) the Court has taken a “preliminary peek” at the merits of the potentially  
2 dispositive motion and is convinced that the plaintiff will be unable to state a claim for relief. *See*  
3 *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

4 Applying the relevant standards, the Court has taken a preliminary peek at the motion for  
5 summary judgment and is not convinced that it will be granted.<sup>1</sup> The filing of a non-frivolous  
6 dispositive motion, standing alone, does not warrant staying discovery. *See, e.g., Tradebay*, 278  
7 F.R.D. at 603. Instead, the Court must be “convinced” that the dispositive motion will be granted.  
8 *See, e.g., id.* “That standard is not easily met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be  
9 *no question* in the court’s mind that the dispositive motion will prevail, and therefore, discovery is  
10 a waste of effort.” *Id.* (quoting *Trazska v. Int’l Game Tech.*, 2011 WL 1233298, \*3 (D. Nev. Mar.  
11 29, 2011)) (emphasis in original). The Court requires this robust showing that the dispositive motion  
12 will succeed because applying a lower standard would likely result in unnecessary delay in many  
13 cases. *Id.* (quoting *Trazska*, 2011 WL 1233298, at \*4).

14 Accordingly, Defendant’s motion to stay, Docket No. 103, is hereby **DENIED**.

15 IT IS SO ORDERED.

16 DATED: February 10, 2017

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19 NANCY J. KOPFE  
20 United States Magistrate Judge  
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25 <sup>1</sup> Conducting this preliminary peek puts the undersigned in an awkward position because the  
26 assigned district judge who will decide the motion to dismiss may have a different view of its merits.  
27 *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion  
28 is not intended to prejudice its outcome. *See id.*